

1           It's too late to deny the project. We agree that you  
2 can impose different requirements as long as they're  
3 appropriate, but you can't just say, "No. No. No. Even  
4 though you're deemed approved under state law, we're somehow  
5 going to give you a W.D.R. that amounts to a denial."

6           Next, with respect to the prohibition, as I know you  
7 know, your board cannot enforce the November 5th prohibition  
8 resolution because the State Board has not approved it. The  
9 Water Code at Section 13245 specifically states the prohibition  
10 is not effective until the State Board approves it and also  
11 requires approval from the OAL and the EPA.

12           So any consideration today of the prohibition,  
13 whether as a matter of policy or otherwise, again, is  
14 tantamount to enforcing it in violation of the Water Code and  
15 in denial of the authority of the State Board.

16           Lastly, staff's supplemental technical memo for this  
17 hearing states at response "D" that staff has no concerns with  
18 the water quality of the effluent from this project. That's a  
19 very, very important point. We're not talking about the water  
20 quality of the effluent here today.

21           And Mr. Lombardo, our engineer, and Mr. Schmitz will  
22 address that further. We are here for the board to promulgate  
23 appropriate Waste Discharge Requirements for this project. We  
24 know that you will treat us fairly and equally with other  
25 projects in the area that you've approved recently.



1 I also want to mention that I'm hearing staff's  
2 presentation of the facts of our system. I believe staff is --  
3 has misstated in virtually every respect what we've submitted  
4 and what our system is, and Mr. Lombardo and Mr. Schmitz will  
5 be addressing those (inaudible) at length.

6 So we're here for our hearing under Section 2208,  
7 which Mr. Ogata cited to you, we're here for appropriate Waste  
8 Discharge Requirements, which can't be a requirement that  
9 amounts to a denial of requirements, the prohibition is  
10 irrelevant at this point because it's not effective, and the  
11 quality of the effluent issuing from our project is not an  
12 issue for the staff report.

13 So with that, I would like to turn to Mr. Lombardo,  
14 our project engineer.

15 MR. LOMBARDO: Thank you, Tamar.

16 Good afternoon, Board Members. My name is  
17 Pio Lombardo. I'm a professional registered engineer in the  
18 state of California and 32 other states, president of Lombardo  
19 & Associates. I've been the engineer of record for over  
20 \$200 million of projects throughout the United States. I've  
21 won engineering excellence awards and worked for extensive  
22 municipalities throughout the United States, we monitor  
23 numerous EPA manuals, and are considered experts in  
24 decentralized wastewater management, which is what this La Paz  
25 project is all about.



1           The description of the project as presented by  
2 Ms. Erickson is not the project that we've submitted. So there  
3 are serious misrepresentations about what is being proposed,  
4 and I will go through those very clearly.

5           I take exception that the engineering is flawed.

6 This is one of the most (inaudible) projects that I've done in  
7 my career so I'm very proud of it, and we are -- we are -- we  
8 will assert (inaudible) system will work, and I trust that you  
9 have the ability to review the documents and see our basis.

10           First of all, the project will beneficially reuse all  
11 wastewater and reduce water supply (inaudible) 60 percent.  
12 That is really (inaudible) concept in the desert. To be able  
13 to do this in the Malibu environment is really not that  
14 difficult.

15           Irrigation demand is going to be -- not going to  
16 be -- is 135 percent to 160 percent depending on the debate of  
17 what E.T.O. you use of available wastewater. That is a  
18 serious -- that is the primary basis for the no discharge is  
19 that we do not have enough wastewater to satisfy the irrigation  
20 demand. Consequently, there's not going to be a discharge  
21 because we need it all -- no net discharge, and I'll get into  
22 the details.

23           The system has been approved by the California  
24 Department of Public Health -- excuse me -- after critical  
25 review in July of this year. That is approval of the Title 22



1 engineering report. It is not the conceptual approval as has  
2 been alleged in staff (inaudible)..

3 The redundancy of the system is extensive, and Mr.  
4 Schmitz will illustrate that. Because of that redundancy, the  
5 probability of the emergency discharge is extremely low or

6 remote. There is facilities or contingencies as required.  
7 Again, the probability occurrence is extremely, extremely low.

8 Next, please.

9 So that's the essence. There are four staff concerns  
10 that (inaudible) find in the documents: flows, final DPH  
11 approval, assimilative capacity, and the odor issues.

12 Next slide, please.

13 Regarding the flows, staff has alleged that the  
14 project will generate more wastewater than projected. We  
15 take -- there is reliance upon (inaudible) water conservation  
16 that the engineering analysis failed to sufficiently consider  
17 peaks on holidays and weekends (inaudible) discharge  
18 (inaudible) quality.

19 The design basis, as the documents clearly state and  
20 it is normal engineering practice -- okay? -- I would be  
21 negligent to do something different -- is that we use local and  
22 national comparables, which include holidays and weekends. We  
23 are the engineer of the Malibu Village facility, which has now  
24 operated since 19- -- excuse me -- since 2007, that's producing  
25 stellar water quality compliant with Title 22 standards. So



1 we're already doing it. We're not talking about doing  
2 something that we haven't already done.

3 There's no reliance on voluntary water conservation  
4 so I'm really stunned as where that came from.

5 We are nationally recognized engineer practitioners  
6 so I question: Where's the basis that we're flawed?

7 The system is sized for weekend flows and  
8 (inaudible). The system is sized for the 300 -- excuse me --  
9 for the 37,120 gallons per day of (inaudible) flow, which the  
10 staff requested that we do in their February 15, 2008, letter.  
11 We alleged and proposed to do it at a lower flow for design  
12 purposes. We provided our bases, and we have acceded to their  
13 request, and the treatment system is sized for the 37,000  
14 gallons, again, per their request, per design code.

15 So there's not going to be more wastewater, if you  
16 will, than the code says shouldn't allow, as well as our  
17 comparables analysis in Malibu Civic Center shows they're not  
18 going to be achieved that way and standards throughout the  
19 industry show those code flows never get (inaudible). Okay?  
20 (Inaudible) rarely in very unique situations. These conditions  
21 do not warrant expectations and there's -- there's no basis for  
22 it going any higher.

23 Next, please.

24 MR. SCHMITZ: Pio, that's it. You're out of time. You're  
25 all done.



1 MR. LOMBARD: Well, Don's going to get in to the rest of  
2 this, and be happy to answer any questions that you may have on  
3 this.

4 MR. SCHMITZ: Good afternoon, Board Members. My name is  
5 Don Schmitz. I'm here to speak to you about the project

6 (inaudible) doing so much this afternoon, I was hoping it was  
7 going to be "Good morning, Board Members."

8 We've been -- we've had the honor of representing the  
9 property owners -- these very fine people -- for over ten years  
10 and a lot (inaudible) and -- and environmental considerations  
11 have gone into this property. This is the 1976 aerial. You  
12 can see the property was used for agriculture for over 100  
13 years as the historical use.

14 The proposed project before you today is the lowest  
15 floor-area ratio -- or F.A.R. -- in the civic center. It's a  
16 .20 F.A.R. project. The Country Mart, right across the street,  
17 is a .48 F.A.R.; and Creekside Plaza, which you authorized a  
18 wastewater treatment system for, is a .54; and the lumbar yard  
19 project, which you approved just last year -- a year ago -- is  
20 a .36 floor-area ratio.

21 It's a beautiful project. The design -- it  
22 incorporates the -- the very leading, state-of-the-art plan and  
23 considerations. We've got two ponds, beautiful lakes, which  
24 are also part storm-water retention. The -- the project is  
25 designed to reflect a Tuscany village with residential-scale



1 buildings of 6- to 10,000 square foot. Most of the buildings  
2 are smaller than the surrounding residences in the area. We  
3 have a central park and courtyard theme we designed in  
4 connection with the Coastal Commission staff. It's a very low-  
5 intensity project.

6 As you can see in this -- in this graphic here, we  
7 have acres of parks involved that -- that brings a lot of  
8 advantages as it pertains to environmental considerations as  
9 well.

10 We have over eight acres of landscape and open space  
11 for public use. This is very advantageous for us when we start  
12 talking about wastewater treatment system. We incorporate  
13 industrial walkways and plazas, it connects to -- this is right  
14 down the Civic Center Way that connects to the greater trail  
15 system for Malibu and the Santa Monica Mountains, and all this  
16 was taken into account as we laid it out with the trees and  
17 everything else that pertains to, yes, environmental  
18 considerations, such as incorporating bike racks, trails,  
19 subterranean parking.

20 So we have the area for -- is there a question? Vice  
21 Chair?

22 BOARD MEMBER GLICKFIELD: No.

23 MR. SCHMITZ: I'm sorry.

24 So we would have that area for the no-net discharge  
25 system. The project also incorporates (inaudible) separated



1 electric car paths to reduce (inaudible) generation within the  
2 civic center.

3           We do meet the M.P.E.S. standards. All runoff from  
4 permeable surfaces and the roofs, we direct (inaudible), but  
5 then, of course, there's water polishing (inaudible) and then  
6 into the filtration systems. We remove all trash. We have the  
7 lakes, which serve as retention basins. We've got three  
8 (inaudible) provide additional water polishing.

9           What I'm trying to illustrate for you is, you know,  
10 the project before you today that has a tremendous amount of  
11 thought to it. All the runoff from the property will then go  
12 to the board-approved and city-constructed runoff treatment  
13 plant, which is virtually right next door to us.

14           The design is so imaginative that the Public Works  
15 Department indicated we should go with recertification, and, in  
16 fact, we're doing so, and several people looked at us and said,  
17 "This is a gold or platinum project." It's extremely rare.  
18 And the wastewater- treatment thought we put into it reflects  
19 (inaudible) involved in the project.

20           First of all -- and I -- I must say I'm really  
21 flummoxed by the assertions by staff or anybody else that there  
22 is a dearth of -- of information that -- at all. This has got  
23 to be one of the most thoroughly studied pieces of property  
24 that I have ever worked on in my 20 years of (inaudible)  
25 planning, not including my tenure with the Coastal Commission.





1           We did the geology and soil, we have 32 borings, we  
2 have 30 trenches, we have 18 cone penetrometer soundings, we  
3 did 13 percolation tests in 2004, we did another ten in 2006,  
4 and then we did 49 infiltration test locations all over the  
5 property when we changed the project design to incorporate the  
6 soils (inaudible) and leach components. We had nine geology  
7 reviews over eight years with the City of Malibu, and all that  
8 information has been submitted to your staff.

9           The total cost just for this part of the  
10 investigation was almost a quarter of a million dollars, and  
11 one of the things that we know for sure is the depth  
12 (inaudible) groundwater.. There's absolutely no controversy  
13 about that.

14           In fact, you can see that over three quarters of the  
15 property groundwater is 12 to 30 feet almost in the back part  
16 of the property. The reason it's 29 feet is because we hit  
17 bedrock in the back and didn't hit groundwater.

18           It's one of the highest and driest uses of property  
19 within the civic center. In fact, where groundwater is  
20 highest, instead of eight foot, that's an elevation of  
21 groundwater commensurate with the entire lumbar yard project,  
22 which you approved about a year ago.

23           We also did hydrogeology. We had five hydrogeologic  
24 reviews spanning the four years within the City of Malibu.  
25 It's a very complicated analysis. We didn't just do borings



1 and do trenches on this property. If you look at that graphic  
2 in front of you, they know where every sand (inaudible) is,  
3 rattle (inaudible), (inaudible), silt and sand and everything  
4 in between so that they could analyze exactly where (inaudible)  
5 would go and how fast it would get there.

6 Of course, this is data that has been submitted to  
7 your staff, it's in the file, and in 2008 this was approved by  
8 the City of Malibu -- the five hydrogeologic reviews for  
9 \$150,000 on that.

10 We've had five environmental health reviews on this  
11 project between 2003 and 2008 -- received the approvals from  
12 the City of Malibu as we went through this process. We spent  
13 \$350,000 designing and redesigning the systems.

14 And by the way, the picture was being painted that we  
15 just can't make up our minds as we're going forward this is --  
16 is very troubling to me because, if there's been changes, it's  
17 because we've tried to be proactive in working with  
18 professional staff at the City of Malibu and the Health  
19 Department and with your staff to come up with the very best  
20 system.

21 So what is the permitting history? I'm not going to  
22 give you a (inaudible) permitting history. That's already been  
23 done by others. We did submit at the end of 2006 our R.O.W.D.  
24 This was with the ENSITU design. This was a very good system,  
25 and it's consistent today with the Basic Plan. It was a



1 tertiary-treated effluent system that was -- would be dispersed  
2 over the entire property.

3           This is where that open-space landscaping component  
4 of the design comes into play. We have a lot of very -- the  
5 historical commercial projects within the civic center do not  
6 have, but we can have this type of (inaudible) disposal as  
7 illustrated in this photograph here.

8           We also included -- included the dispersal  
9 (inaudible) filtration chambers underneath the parking lots and  
10 a 50,000-gallon holding tank. This system, which we submitted  
11 in 2006, is consistent with the Basin Plan that is the law for  
12 this property today.

13           This leaching area system reduced water (inaudible)  
14 by 90 percent, and so the conclusion on that very complicated  
15 geohydrology study I referenced earlier was that groundwater  
16 rise -- I -- I don't understand how anybody can say that we  
17 haven't analyzed groundwater rise -- would be one to three  
18 inches at the property lines. No appreciable groundwater  
19 (inaudible) on the subject for the surrounding properties --  
20 none.

21           So in April of '07, the board staff contacted us and  
22 said, "We just don't have the staff to process this right now."  
23 And in May they told us they weren't going to process until we  
24 were done with the CEQA review. I then -- and my firm --  
25 started contacting the staff saying, "Please, let's meet.



1 Let's confer. Let's find a way to approve and make sure we're  
2 addressing all your concerns." That did not happen.

3 In November of '07, your staff submitted a flawed  
4 comment letter on the Environmental Impact Report with a number  
5 of errors in it on the project. We then commented -- we then  
6 contacted -- that was after the 45-day period, we still asked  
7 the City to respond to that E.I.R. document, and we were told  
8 in December of '07 that your staff does not do meet-and-greets  
9 and they would not meet with us.

10 Therefore, we then filed our first complaint to the  
11 State Board saying "We need somebody to talk on this," and at  
12 that juncture -- in early 2008 -- Ms. Egoscue took the bull by  
13 the horns and had a meeting with us with all her staff, and I  
14 want this board to know that -- that her handling of it was  
15 excellent. She directed her staff to work with us, and we  
16 moved forward in a very constructive fashion to make this  
17 excellent system much, much better.

18 So what is before you today is Mr. Lombardo's system,  
19 which is the Title 22 system. It's a very complicated system  
20 in the sense that it creates Title 22 water with (inaudible),  
21 ozonation, disinfection to chlorination, UV, and this allows us  
22 to have a hundred percent water reuse.

23 We can reuse that water to flush the toilets within  
24 the project. That is 45 percent of the effluent will be  
25 reused. The remainder of the treated effluent will be utilized



1 by the landscape and all of it -- the average daily irrigation  
2 demand for this project is 14,200 gallons per day.

3           The average daily reclaimed water available for  
4 landscaping is 10,460 gallons per day. That means there's a  
5 deficit of 3,700 gallons per day of additional potable water

6 we'll have to bring in just to keep our landscaping viable. We  
7 would use every drop of the wastewater on this project -- every  
8 drop.

9           As you can see on these exhibits, this sort of soil  
10 (inaudible) rise and leaching is extremely effective. It's not  
11 some radical technology. It is proven. It works very well.

12           Now, where did we get this 14,200 gallons per day?  
13 This is not -- this is not some random number. It's a very  
14 specific number. This analysis was derived from 15 years of  
15 daily (inaudible) numbers (inaudible) from the California  
16 Irrigation Management Information Systems. This is Seamus. We  
17 didn't create this model. Seamus is the program of the Office  
18 of Water Use Efficiency from the California Department of Water  
19 Resources. That's where we got the data.

20           Additionally, the plant -- plants for our landscaping  
21 pallet was derived from the Department of Water Resources guide  
22 to estimating landscaping plantings. It's not controversial  
23 data, Board Members. This is something that the State of  
24 California created, that's what we plugged in, and we also used  
25 additional data from monitoring stations within the area to



1 substantiate that in fact ET numbers were correct.

2           If you look at the exhibit here, you can see again,  
3 this is where the low intensity to the development comes into  
4 play. We had a landscape architect (inaudible) Forrester  
5 (phonetic) come up with the landscape pouch, a low-moderate,  
6 high-water-use plants all throughout the entire property.

7           This means that the irrigation water demands is based  
8 upon the plants for -- plants proposed for the various areas  
9 and their specific ET and efficiency rates. This maximizes the  
10 efficiency and the water use. In plain English, you don't  
11 supersaturate the soils, and you don't desiccate the  
12 landscaping. It is an extremely simple but at the same time  
13 exact science.

14           But what about the wet times of the year? What about  
15 wet -- wet-weather storage? We're providing an 800,000-gallon  
16 underground storage tank. These enormous tanks you see in  
17 front of you are 40,000 gallons. That is 20 of these. This is  
18 one of the changes that we made just -- staff's alluding to on  
19 why they can't seem to pin down this project as being complete  
20 because they were concerned about the wet-weather storage.

21           What do we do with this wet-weather storage? We took  
22 those -- the -- those ET numbers that we were just describing,  
23 and we came up with that 800,000 gallons because what we will  
24 do is -- because what we will do is we will store that  
25 wintertime Title 22 water, and then we will -- we will disperse



1 it slowly during spring and summertime months.

2           The average year we will be storing 280,000 gallons  
3 within that tank, as you can see on this very accurate graph in  
4 front of you. The yellow line is the -- is the water storage.  
5 The blue line is the -- the evapotranspiration numbers.

6           What about very, very wet years? In the wettest  
7 El Nino, coldest, cloudiest year, we would have to store  
8 700,000 gallons. We will still have 100,000 gallons of excess  
9 capacity in our wintertime storage. On the project you  
10 approved right across the street -- Malibu Lumber -- you didn't  
11 require them to have a wintertime water storage tank.

12           This is something that we are accepting and are  
13 adding as part of our project. The reason I wanted this is I  
14 saw the problems that were being -- coming down with the City  
15 of Malibu and this board, and I was bound and determined to  
16 extricate my clients from this and, as much as scientifically  
17 possible, come up with a zero-discharge project.

18           What about off-spec flows? That's something that's  
19 in the report. "Off-spec flows" means turbidity. This is the  
20 Title 22 definition. It's normally short -- very short  
21 duration -- three to five days -- based upon all historical  
22 references. The 800,000-gallon tank that we -- I discussed  
23 with you has a 50,000-gallon component to the storage off-spec  
24 water. Additionally, we have a 40,000-gallon utilization tank.  
25 We have four or five days of storage for off-spec flows.



1           Now, the off-spec flows are not some toxic waste.  
2 The off-spec flows meet the effluent standards of the Basin  
3 Plan that's in existence right now. We're not required to have  
4 a Title 22 system, but we cannot use the off-spec flows  
5 directly into our landscaping. Therefore, we can assure you  
6 that the off-spec flows will be part of the no-net discharge.

7           So your staff asked for a transient groundwater  
8 (inaudible) analysis. They asked. We gave it. We've given  
9 them everything that they've asked for.

10          Under normal operating conditions, there will be zero  
11 discharge. If there's off-specification discharge, we didn't  
12 do three to five days, we did 20 days at 20,000 gallons per  
13 day, and what did the modeling show? That, again, there would  
14 be a one to four inch rise in groundwater in this scenario at  
15 the property lines. That's statistically inconsequential.

16          What that means, as substantiated in the reports we  
17 submitted and that your staff has, there will be zero  
18 groundwater rise on the adjacent Legacy Park. There was -- be  
19 zero groundwater rise on the adjacent Country Mart property.  
20 That is the science, and there has been no contravening  
21 evidence to -- to support any other assertions.

22          So the conclusion is the groundwater level rise would  
23 be minimal or nonexistent and it will not affect the  
24 functioning neighbor septic systems, and that is the law, that  
25 is the code under the Basin Plan.





1           So what does the no-net discharge really mean? Under  
2 Assembly Bill No. 32, global greenhouse gases -- any one of us  
3 that's a member of the California chapter of American Planning  
4 Association knows the only way we will meet those global  
5 greenhouse gas goals is by moving water around less. Twenty to  
6 25 percent of the electrical demand in the state of California  
7 is just moving around water.

8           The carbon footprint from this project will be  
9 extremely low, and then all the remaining water will be used  
10 for irrigation. Did not the State Water Resources Control  
11 Board adopt a resolution promoting water use and recycling? Is  
12 this not the most superior project that I personally have ever  
13 seen? Is there one that you've seen that is better? How do  
14 you do better than a hundred percent water reuse consistent  
15 with the resolution of the State Board?

16           This represents an average yearly savings of six  
17 million gallons, and that's conservative. That's a 20-acre  
18 feet. Twenty-acre feet is enough water -- potable water --  
19 that we will be using to cover the entire 20-acre Legacy Park,  
20 lumber yard project a foot in depth. That is significant.

21           So back to that timeline, we met with your staff, we  
22 submitted and worked with them and -- and -- and I -- I want to  
23 say that this was an extremely constructive period of time.  
24 Ms. Egoscue sent us a letter that said the project design  
25 concept is innovative for the City of Malibu area and may



1 result in very little and perhaps no discharges to shallow  
2 groundwater.

3           We then worked with them until June, and then the  
4 City completed their CEQA review, and they certified the -- the  
5 Environmental Impact Report. We then did send the notice of  
6 decision to your staff -- it wasn't just a little e-mail -- and  
7 it was our understanding based upon the letter that we received  
8 from your staff that the last thing remaining was the  
9 certification of the Environmental Impact Report, and I've got  
10 stacks of reports, and all the demands from your staff show  
11 that we had met everything else that they had asked for.

12           So we did notify the State Board that the application  
13 was deemed complete, but we continued to work with your staff.  
14 We then -- when they asked us to do a -- Title 22 working  
15 drawings, which is essentially to construct this system, we did  
16 it -- tens of thousands of dollars of more work.

17           And your staff's sort of glibly saying, "Well, you  
18 know, we hadn't done that in the past on other projects."  
19 Right next door, as you can see from this e-mail, your staff  
20 sent the California Department of Health Services in 2008 on  
21 the lumber yard project, which has higher groundwater and is  
22 closer to the lagoon -- they weren't required to do the working  
23 drawings and process those through the California Department of  
24 Health Services.

25           We knew that, but we still did it. We have not been



1 obstructionists. We have done everything we can to make this  
2 project something that you feel good about. We have, in fact,  
3 received the final approval on our Title 22 working drawings  
4 from the California Department of Health Services.

5 What about the effluent quality? No discharge

6 Title 22 -- we will not impact the water quality whatsoever.  
7 We are proposing advanced nitrogen removal prior to the  
8 discharge, and any nitrogen or phosphorous which is left over  
9 will be consumed by the landscaping. This is a scientific  
10 fact.

11 In its technical supplement to Item 12 your board  
12 staff states it's not concerned with La Paz's effluent quality.  
13 Staff's concerns are not about the water quality of the  
14 effluent but about the capacity of the basin to absorb the  
15 fluids without affecting operations directly downgradient.

16 Well, how much science do we have to submit, how much  
17 geohydrology, how many borings to show that we're not going to  
18 elevate the groundwater off of our property at all? How does  
19 one answer when you have a hundred percent water reuse that  
20 were not going to impact downgradient properties? We've  
21 answered that question, and we've answered it repeatedly.

22 So La Paz's effluent is treated to Title 22  
23 standards. That's not the law, that's not what the Basin Plan  
24 says, but we are doing that because we want to have a no-  
25 discharge system. We want to have a hundred percent water



1 reuse. We will not raise groundwater levels, we will not  
2 impact adjacent properties, we will not contribute to nutrient  
3 pollution within the civic center, and we comply with all  
4 existing water quality objectives in the Basin Plan.

5           So what is going on? Why are we before you today  
6 with a staff recommendation of denial? Why is their entire  
7 presentation stating that we are not giving you the information  
8 when the record is crystal clear that we have far exceeded the  
9 submittal demands of our neighbors and other projects similarly  
10 situated? It's about prohibition.

11           And we can say it's not about the prohibition, but  
12 the fact of the matter, it is about the prohibition. In fact,  
13 your revised notice of determination staff wrote for you states  
14 that the prohibition applies to the La Paz project -- No. 25.

15           13245 -- the State Water Code -- says a water-quality  
16 control plan or revision thereof adopted by a regional board  
17 shall not become effective unless and until it is approved by  
18 the state board. We have been working on this project for ten  
19 years. We've had an application pending in front of this board  
20 since the end of 2006. It is a Title 22 system -- Title 22  
21 system -- excuse me -- and it incontrovertibly exceeds the  
22 standards in the Basin Plan.

23           It should not be denied, we should get our discharge  
24 requirements from you today, and we should move forward. I  
25 don't expect you to throw a parade for us, but we've worked



1 very, very hard to come up with the very best project for this  
2 property.

3 So we have a little under six minutes left, and I  
4 would like to retain that for rebuttal. If you have any  
5 questions, I'm available.

6 CHAIRWOMAN LUTZ: The next presentation is ten minutes for  
7 Heal the Bay and Santa Monica Baykeeper together.

8 MS. JAMES: Good afternoon. Kirsten James with Heal the  
9 Bay. Hopefully, we won't need that full ten minutes, but thank  
10 you for that.

11 So I'm sure the November hearing is fresh in all of  
12 our minds. It was quite the marathon of a hearing, and what we  
13 heard that day was all of the evidence and, you know, all the  
14 testimony from staff and experts about the water-quality  
15 impacts in the civic center area.

16 And so, appropriately, your board put in place an  
17 amendment to the Basin Plan, and I think that's the key here is  
18 all of the evidence and all of the science and all the  
19 technical reporting got you to that decision.

20 And, you know, the intent of that resolution that you  
21 passed is very clear, "The Regional Board hereby adopts and  
22 amends the Basin Plan to include a prohibition on discharges  
23 from onsite wastewater disposal systems in the civic center  
24 area."

25 And the exceptions to this are very, very narrow, and



1 this project does not fall under those. In fact, I remember a  
2 discussion about specifying properties that would be exempt,  
3 and those were just residential properties, not something to  
4 this extent, which is going to be developing a 15-acre site  
5 with 100,000-plus square feet of retail and commercial space,  
6 which is, you know, a potential big impact for water quality.

7           So we're here today definitely supporting your  
8 staff's decision to issue Waste Discharge Requirements not  
9 allowing a discharge at this time. And, however, we think you  
10 need to go the step further because some of the language that's  
11 in the findings -- and what have you -- seem to make it sound  
12 like, if they resubmit the Report of Waste Discharge, there  
13 might be some change of plans down the line.

14           And we ask that you stick to your November decision.  
15 It's cut and dry. It's not approved by State Board, but that  
16 doesn't matter. It's your decision, you saw water-quality  
17 impacts, you saw T.M.D.L. impacts, and so you made the decision  
18 to not allow discharges.

19           You know, La Paz is putting in all the bells and  
20 whistles on this project, and, you know, that's appreciated,  
21 but that's what Malibu Lumber had, and look where we are with  
22 them. So, you know, the bells and whistles don't always get us  
23 to where we need for water quality.

24           So I think, based on your staff presentation, it's  
25 really evident that the Report of Waste Discharge doesn't have



1 all that we -- we need in there. But the greater point is  
2 that, regardless of the Report of Waste Discharge, this project  
3 can't go through at this time because of your November decision  
4 and the huge water-quality impacts that are occurring in the  
5 civic center area.

6 So we ask you to support staff's decision and also  
7 make a statement to make it clear that, you know, we don't plan  
8 to come back in six months and -- and give them another  
9 opportunity to go for this, but we're sticking with our guns,  
10 and we're sticking with the November decision.

11 So I'll pass on to Tatianna at this time.

12 MS. GAUR: Good afternoon again. Tatianna Gaur with Santa  
13 Monica Baykeeper.

14 I think it's clear that contrary (inaudible) -- but  
15 contrary to what the discharger asserts, their application  
16 wasn't complete. They're relying on a letter which says --  
17 which they're interpreting as just apprising them to submit the  
18 approval of the E.I.R. for Malibu and that would have completed  
19 the application. However, the letter clearly stated that  
20 there's an independent determination that the Regional Board  
21 had to make -- had to make.

22 And that's not surprising. I mean, I understand that  
23 they are frustrated they had to submit so many technical  
24 documents. However, it's -- it's justified by the area. It's  
25 justified by the extensive water-quality problems that we see



1 there. It's also justified given what the Regional Board staff  
2 knew at the time and how pervasive and serious those problems  
3 are.

4 So the application was deemed -- could not have been  
5 complete -- in fact, it was incomplete -- and Regional Board

6 knowing what you know by now after all these technical  
7 memorandums -- that memorandum that your staff prepared, the  
8 studies, the analysis (inaudible) permit to discharge in that  
9 area right now -- to continue discharge will be completely  
10 unjustified, will go against the scientific evidence, and, more  
11 importantly -- I think nobody has mentioned -- but there is no  
12 discharge going on right now.

13 There is no -- there is no buildings there. There is  
14 no system that's discharging. So we're kind of talking about  
15 something that's not, kind of, realistic at this point -- maybe  
16 in five years. Who knows?

17 Assuming the W.D.R. was complete, and assuming you  
18 want to issue a W.D.R. at this moment -- which I think staff is  
19 asking you to do -- you have the authority to not allow  
20 discharge. The regional -- the California Water Code -- I  
21 think it's Section 13243 -- authorized the Regional Board to  
22 decide not to permit a discharge.

23 There is no language in the Water Code which directs  
24 you to issue a permit at this time. In fact, you can decide to  
25 issue it or not issue it, and all of that should be based on





1 various policies, basin plans, the beneficial uses of the  
2 water. Again, knowing what you know, I don't think you should  
3 issue -- you should allow discharge.

4 So in conclusion -- I don't want to repeat myself, I  
5 don't want to take any more time -- we support the -- the

6 staff's proposal, but I think you should issue the tentative  
7 W.D.R. as proposed, and thanks for the opportunity to comment.

8 I'd like to reserve my remaining four minutes --  
9 three minutes for rebuttal if we need to. Thank you.

10 CHAIRWOMAN LUTZ: Thank you.

11 Now we'll go to questions, and we'll start --

12 MR. SCHMITZ: Madam Chair? We retained five minutes for  
13 rebuttal, and you indicated that was acceptable to you. I  
14 won't take that long.

15 CHAIRWOMAN LUTZ: It -- it's not our -- our practice to  
16 have rebuttal, but I will give you (inaudible) if you want to  
17 do it. But, you know, we -- we've got to start moving on.

18 MR. SCHMITZ: Yes, ma'am.

19 Before I move to (inaudible), I find the testimony  
20 interesting. The first speaker says, "Send a message. We're  
21 serious. We want to have a prohibition." Here's the message  
22 that she asked you to send: "We at the Regional Board level  
23 are going to ignore due process and the law."

24 The law is crystal clear. There's not a moratorium  
25 or a prohibition until it is reviewed and approved by the State



1 Board and by the EPA. That has not happened yet. It is  
2 reckless for a member of the public to advise the Regional  
3 Board to purposefully break the law.

4 In regards to Ms. Gaur -- I'm sorry if I'm  
5 mispronouncing the last name -- she says that the scientific  
6 basis doesn't justify allowing it. Where is the contravening  
7 scientific evidence?

8 I have reports, I have geohydrology -- numerous  
9 ones -- I have geology and soils, I have dozens and dozens and  
10 dozens of percolation tests, I have stratigraphy, I have proof  
11 that we are not going to raise the groundwater on the adjacent  
12 properties to their detriment. We have a hundred percent water  
13 reuse, and even if there are off-spec flows, it will not have  
14 significant impacts.

15 Ms. Gaur, on behalf of the Baykeepers, filed a  
16 lawsuit against the City of Malibu and La Paz, and she argued  
17 water-quality issues. She argued cumulative impacts. She  
18 argued the same things that she's arguing here today. She  
19 lost. The Superior Court found that, in fact, the record --  
20 this record was clear, we're not going to have deleterious  
21 impacts on the neighboring properties.

22 What is before you today is nothing less than a  
23 revolutionary design. It is the best that our science can do  
24 today. It is consistent with the amendments to the state law,  
25 by the -- excuse me -- the -- the resolution by the State Board



1 in regards to water reuse, it is consistent with global  
2 greenhouse gas law in the state. Is it consistent with the  
3 Basin Plan? No. It's not consistent; it far exceeds it.

4 The record will also show very clearly we have given  
5 your staff repeatedly everything that they have ever asked for.

6 If they assert otherwise, it simply is not true. It is not  
7 consistent with the record.

8 Board Members, I urge you, please, we have, in fact,  
9 done a good job. We should be allowed to proceed with our  
10 project. With that, I will close, and I'm available for any  
11 questions that you may have.

12 CHAIRWOMAN LUTZ: Thank you.

13 And I'm assuming, Ms. James, I'm assuming you'd like  
14 to use your rebuttal time, and we'll just say three minutes.

15 MS. JAMES: Yeah. Thank you very much. This is sort of  
16 an odd process to have the rebuttal, but I definitely want to  
17 get my word in with being called "reckless."

18 I totally disagree with that, obviously.

19 And the basis of your decision -- you, as a body, are  
20 legally obligated to protect water-quality standards, including  
21 beneficial uses and water-quality objectives. A, this project  
22 doesn't have a complete Report of Waste Discharge so we have no  
23 certainty that that would be a fact with this discharge; and,  
24 B, the T.M.D.L.'s in place, the water-quality standards that  
25 are currently impaired, any contribution to those would not be



1 in accordance with the law.

2 So I totally disagree with what this gentleman is  
3 asserting and think that you definitely have the authority to  
4 go ahead and make that assertion.

5 And, furthermore, you base that all -- you have all  
6 the evidence from your November hearing about the water-quality  
7 impacts and about increasing the discharge and harming  
8 beneficial uses further. So I think the facts are pretty clear  
9 there.

10 MS. GAUR: Thanks for bearing with us.

11 So the technical evidence of which I was referring,  
12 Mr. Schmitz and members of the board, is actually the technical  
13 memoranda that extensive studies and analysis which the  
14 Regional Board staff did and we discussed ad nauseam here on  
15 November 5th, and I think I mentioned this, but I guess he  
16 didn't hear me.

17 And as for our lawsuit, I don't want to get into an  
18 argument over what we lost and what we want. All I wanted just  
19 this board to know that the ruling of the court -- of the state  
20 court found the analysis for CEQA was adequate, not that the  
21 project in any case will never have cumulative impacts or any  
22 impacts.

23 It is this board's duty to determine whether any  
24 project or any discharge will have impacts in water quality. A  
25 state court judge doesn't have the technical expertise,



1 needless to say, and you are an independent agency which relies  
2 on the E.I.R. that makes its own determination, and I'm  
3 appealing to you to make your own determination based on what  
4 you have before you today on record.

5 Thanks for the opportunity to rebut.

6 CHAIRWOMAN LUTZ: Thank you.

7 And now we'll start with questions (inaudible).

8 Or -- I'm sorry.

9 Ms. Egoscue?

10 MS. EGOSCUE: Thank you. I'm going to take my prerogative  
11 to start your questions with a short statement.

12 We worked very well with this discharger up until the  
13 point where we were informed that they had a permit under their  
14 own right, and that was the Permit Streamlining Act. We  
15 disagreed, we were very clear that we disagreed, and from that  
16 point on, it became a legal issue.

17 Today we took great pains to present this board a  
18 legal argument. We are asserting our legal right to discharge  
19 in our region, and that's plain and simple. So I just wanted  
20 to avoid the technical arguments, which are irrelevant and  
21 the -- quite frankly, the prohibition is irrelevant. This is a  
22 legal argument about whether or not this discharger can write  
23 their own permit.

24 And then, with that, we can have questions of our  
25 staff counsel or to the extent that you want to go into



1 technical --

2 CHAIRWOMAN LUTZ: Okay. Well, let's -- do you want to  
3 start with staff, or you want to start with calling (inaudible)  
4 speakers.

5 BOARD MEMBER BLOIS: (Inaudible) I've -- I've got a couple  
6 of direct, to-the-point questions --

7 CHAIRWOMAN LUTZ: Okay. Just do our questions.

8 BOARD MEMBER BLOIS: -- and I'll -- and we'll start with  
9 staff. Tracy's up there. But I do have two questions of  
10 Mr. Lombardo and Mr. Schmitz.

11 Tracy, there seems to be a complete disconnect  
12 between staff's opinion of the day that it was committed and  
13 the applicant's opinion, and that really troubles me. In --  
14 I -- I don't know who to believe.

15 MS. EGOSCUE: That's --

16 BOARD MEMBER BLOIS: -- (inaudible) have seen it through  
17 the different-colored lenses than the other. That -- that much  
18 is -- is quite clear, I think, not only to me, but everybody  
19 here. Now, given that, I've got to go with the applicant. I  
20 really do.

21 And it's a benefit-of-the-doubt type of thing. So,  
22 on a personal level, that's kind of where I'm starting from.  
23 Can you enlighten me and think of why there's a disconnect? Is  
24 there something that I'm not seeing here?

25 MS. EGOSCUE: I -- I -- I tried to explain where we came.



1 There -- standing operating -- standard operating procedures  
2 are that we work together -- the two entities -- the board and  
3 discharger -- and then we get to a point where we think we  
4 think we can bring a permit to the board.

5           Sometimes we don't have full agreement but staff  
6 feels comfortable that they can propose to the board a permit  
7 that will work and that will conform to the law. We did not  
8 get to that point, and we were working towards that point.  
9 We -- at no point did I say, "Let's" -- "Let's stop working on  
10 this permit." We intended to continue to process this permit.

11           In the midst of all of that, the discharger notified  
12 us that they now had their own permit by operation of law. So  
13 I think, with all due respect, it doesn't matter if you believe  
14 staff or if you believe discharger. Right now what is at stake  
15 and what is on the table is your authority to discharge this  
16 facility.

17           If you decide that you think they should have a right  
18 to discharge a -- to have a permit, the recommendation from  
19 staff is that you can -- one of the options that staff counsel  
20 presented was that you can direct staff to work and bring back  
21 a permit, which, quite frankly, is what we were doing anyway.

22           Now, the other issue that is really important as --  
23 there's a State Board petition by this discharger, and in the  
24 petition it's petitioning our failure to act as a board, which  
25 is why it was very important for us to bring it to you and have



1 board action. And in the absence of that, the State Board  
2 would then decide what they want to do with our region and our  
3 permit in our region.

4           So it ceased to become a -- an engineering argument  
5 or a technical argument when they asserted that they had a  
6 right to permit themselves. And, quite frankly, it's a  
7 slippery slope. If you allow a discharger to assert a right  
8 that we disagree with, then every discharger is going to line  
9 up and write their own permits in our region.

10           BOARD MEMBER BLOIS: So what you're saying -- short and  
11 sweet -- is the minute they lawyered up, we reacted negatively  
12 and -- and that -- and now it's a legal battle?

13           MS. EGOSCUE: That's essentially what I'm representing to  
14 you.

15           BOARD MEMBER BLOIS: Let me ask another question: In  
16 regards to the waste discharge permit -- whatever way, shape,  
17 or form it is -- from what I've been listening to the  
18 capabilities of their system, it's my opinion -- and correct if  
19 I'm wrong -- they don't even need a permit from us. I don't  
20 understand why we're even here.

21           MS. EGOSCUE: The staff -- again, without going into too  
22 much technical detail, because we hadn't finished our review --  
23 because, again, we reacted negatively when we were -- when  
24 there was lawyer up -- the -- there is some question as to  
25 whether or not there is a discharge to groundwater, and that





1 is -- that is where, if this had been a traditional permit  
2 proceeding, we would be having those discussions and staff  
3 would have laid out to you its concerns.

4 We have engineers on staff, we can do the same thing,  
5 but we didn't get to that point because right now we're  
6 defending our -- our responsibilities and obligations under the  
7 law.

8 BOARD MEMBER BLOIS: Okay. Thank you.

9 I have a question for Mr. Schmitz, if you could  
10 come --

11 MR. SCHMITZ: Yes, sir.

12 BOARD MEMBER BLOIS: I'll ask you: Why are you here? You  
13 don't need a permit.

14 MR. SCHMITZ: Well --

15 BOARD MEMBER BLOIS: To me, you have a system design  
16 that's fully capable of creating Title 22 water and reusing  
17 more than has been produced. Therefore, you have no discharge  
18 under -- under normal operating conditions.

19 You've got 800,000 gallons of storage, which is an  
20 incredible amount, that will continue through wet and dry  
21 season cycles -- et cetera, et cetera -- and you've got an  
22 initial 50,000 gallons of off-spec storage in the event of an  
23 accident or something doesn't go right, which gives you, by  
24 your own numbers, several days' worth of capacity even in the  
25 middle of the summer, and if something continues past that, you



1 could get a pumper in.

2           You -- there is no way that I can conceive of this  
3 project creating a discharge. Am I -- what am I missing?

4           MR. SCHMITZ: Well, sir, that's actually a very salient  
5 point. There's two reasons why we're here -- and I would note

6 with keen interest that, when we had the meeting with your  
7 staff for the first time, that was Director Egoscue's reaction  
8 as well, "I don't know if you guys will even need a permit for  
9 us if you have a total water reuse system like this."

10           That being said, there's two reasons why we are here.  
11 Under the Permit Streamlining Act component, once we were  
12 deemed approved, this -- the -- the board still needs to have a  
13 2208 hearing. That means we're approved, but it doesn't mean  
14 we get to go cowboy it up and just do whatever we want to.  
15 This board still has the -- the authority and responsibility to  
16 identify what the appropriate discharge standards are. That  
17 doesn't mean no discharge at all or -- or not allowed to build  
18 but it -- it does mean that you've got a responsibility and an  
19 authority to do that.

20           The second reason we are here is because our system,  
21 to achieve the no-net discharge component, had to be modified  
22 to a Title 22 system. The first system that we submitted,  
23 which was very good water -- tertiary water quality -- still  
24 had to be something like a foot below the surface, and we  
25 couldn't reuse it in the toilets.



1           So we went to the Title 22 system so we would have 45  
2 percent water reuse and we could move those microdosing thin  
3 lines to within six or eight inches of the surface. This means  
4 the evapotranspiration of the plants uptick is extremely  
5 effective.

6           However, explicit in the code of Title 22 is the off-  
7 spec component. Now, as testified to earlier, three to five  
8 days of -- of off-spec is definitely what systems like this --  
9 if it ever happens -- for turbidity -- that's what's  
10 experienced.

11           But it's my understanding that the Title 22 code  
12 requires that we accommodate 20 days of off-spec flow. Now,  
13 it's true we could -- we could with the -- with the underground  
14 storage capacity that we have, we could bring in pumper trucks,  
15 and we could do stuff like that but the -- you know, we are  
16 not, despite what is being intimated, trying to usurp the  
17 authority of this board or exclude you from the process.

18           We should have a 2208 hearing, and you should give  
19 us reasonable discharge requirements for this project.

20           BOARD MEMBER BLOIS: Thank you very much.

21           My other question is for Mr. Lombardo.

22           BOARD MEMBER LOMBARDO: Who I am in no way related to.

23           MR. LOMBARDO: Thank you (inaudible).

24           Yes, sir.

25           BOARD MEMBER BLOIS: Explain to me a little bit about this



1 Title 22 effluent. Is this the same effluent that Las Virgenes  
2 Municipal Water District (inaudible) produces and distributes  
3 in their reclaimed-water system?

4 MR. LOMBARDO: I'm not -- I'm not (inaudible) specifically  
5 with their situation, but it is reclaimed water produced in  
6 many plants (inaudible). It is the same water quality, for  
7 instance, that's used for -- trying to think of -- Irvine Water  
8 District, as an example, produces that. They use it in  
9 building, like at the Toyota headquarters, which is one of the  
10 poster childs of the system.

11 So it classifies unrestricted water reuse. Could  
12 even be used for -- vegetate for edible crops as well.

13 BOARD MEMBER BLOIS: This Title 22 effluent water that's  
14 being produced and stored in these 800,000-gallon storage  
15 tanks, does it degrade at all? How --

16 MR. LOMBARDO: No. One of the -- one of the --

17 BOARD MEMBER BLOIS: Does it have a shelf life?

18 MR. LOMBARDO: Yeah. Good -- good question. One of the  
19 design points in the documents is there's going to be residual  
20 chlorine maintained in that tank to prevent regrowth or any  
21 slime growth. It, frankly, is a setting issue because  
22 you'll -- there will be some slime growth to occur.

23 So there will always be a residual chlorine  
24 maintained. Those are in the design documents that were  
25 prepared and approved by the EPA.



1 BOARD MEMBER BLOIS: And the residual chlorine, is that  
2 used for the Title 22 water for the same reasons as potable  
3 water --

4 MR. LOMBARDO: Yes. Yes. Precisely. In -- in my most  
5 potable water -- there's very few that don't do it, but most

6 potable water systems maintain a residual chlorine to prevent  
7 this slime growth or -- or regrowth that occurs in distribution  
8 pipes because it sit -- it'll sit there for a long time.

9 BOARD MEMBER BLOIS: And the -- and the chlorine dosing  
10 that you're proposing in -- in your system is the same or  
11 different than a potable water system?

12 MR. LOMBARDO: That's correct, sir. That's correct.

13 BOARD MEMBER BLOIS: The same?

14 MR. LOMBARDO: Yes. It's the same -- it's using -- what  
15 we're proposing -- the system has three disinfection  
16 techniques. We're using UV; we're using ozone, which is a  
17 disinfectant; and we're treating for the emerging contaminants;  
18 and then we have a (inaudible) system to maintain the residuals  
19 in the storage tank, and that is the same chlorine system  
20 that's used in swimming pools and potable water supplies.  
21 There will be chlorine gas there in cylinders that will be  
22 injected in the water with chlorine sensors, et cetera.

23 BOARD MEMBER BLOIS: I'm going to ask you one more  
24 question, and it may be unfairly, but I'm going to do it  
25 anyway.



1 MR. LOMBARDO: Go ahead.

2 BOARD MEMBER BLOIS: Can you think, as an engineer, why  
3 there is some reason why our staff would think that your  
4 reports are incomplete?

5 MR. LOMBARDO: There's no --

6 BOARD MEMBER BLOIS: Think -- think -- put yourself in  
7 their -- in their boots. Why would they think that?

8 MR. LOMBARDO: I've never been put through this level of  
9 grinding, and I've been through -- put through a lot. It's --  
10 the only rational analysis that I can come up with, it's  
11 nontechnical, it's political. There is no technical basis for  
12 any dispute, and this is -- to me, this is a -- what do you  
13 call it? -- a (inaudible) project. We're reusing all the  
14 wastewater. The level of detail here in these plans is far  
15 greater than the level of detail that I've ever put together in  
16 planning documents that are prepared for permitting purposes.  
17 We're way far --

18 BOARD MEMBER BLOIS: I get the point. Thank you,  
19 Mr. Lombardo.

20 MR. LOMBARDO: Thank you.

21 BOARD MEMBER BLOIS: That's all I have, Chair.

22 BOARD MEMBER GLICKFIELD: Is Ms. Egoscue here? Thank you.

23 So why -- one of the reasons the -- I think one of  
24 the points that Mr. Schmitz brought up is that -- and  
25 repeatedly the other -- the other (inaudible) that the La Paz



1 project brought up is that it seemed that there was a much  
2 greater standard of review for this project.

3 Was that because this is the -- what was that for?  
4 Why -- why was it that we never even asked Malibu Lumber people  
5 to do a (inaudible) discharge.

6 MS. EGOSCUE: Right.

7 BOARD MEMBER GLICKFIELD: So why were we not deeming it  
8 complete until we were sure that it was a no-discharge plan?

9 MS. EGOSCUE: I want to respond to -- also to the  
10 contention that it's political. The -- the -- the very  
11 existence of Malibu Lumber (inaudible) that. Their -- the way  
12 that I see this is as the executive officer. I do not work  
13 with staff day to day. Things come up -- they bubble up, and I  
14 process them. Malibu Lumber bubbled up first. There were some  
15 issues with Malibu Lumber from a staff perspective, but  
16 ultimately they became comfortable to bring it to the board.  
17 If you recall, they were not in full agreement with the City or  
18 with the discharger.

19 As I stated earlier, this is how we do it. We get to  
20 the point where we feel comfortable enough, and then we come to  
21 the board.

22 In -- in La Paz -- La Paz -- the -- the plan -- I  
23 also wanted to clarify the plan does have a discharge of the  
24 Title 22 water to irrigation so it would require a water-  
25 recycling permit, which we were also starting to process and --



1 and -- and conceptualize and go across units to get that done.

2           So it was a matter of processing a permit, coming up  
3 through me. I did -- I did receive a phone call from John  
4 Bishop, who had received a phone call from the discharger, and  
5 I did insert myself into the process with staff and begin to  
6 prioritize this project. I did intercede and begin to  
7 prioritize, and we just didn't get there before they contested  
8 it and asserted their own right to a permit.

9           BOARD MEMBER GLICKFIELD: Okay. Again, I'm not completely  
10 clear as to why the staff wouldn't have brought the -- if you  
11 were at -- at the point where they were declaring that they had  
12 deemed their permit, why didn't you bring this to us then?  
13 I -- I'm still not understanding -- I understand that what you  
14 said was that "We work with the applicants until we get some  
15 kind of a waste discharge permit that we could apply."

16           In this case, they were -- we had concerns about any  
17 more -- groundwater discharge -- is that correct? -- okay --  
18 concerns about putting another project with groundwater  
19 discharge?

20           MS. EGOSCUE: Well, the -- the cumulative impact issue  
21 really came up out of the multiple commercial developments in  
22 the civic center area. It was the first time that it became an  
23 issue for the board and staff, and it was something that was  
24 elevated to the board through executive officer reports before  
25 Malibu Lumber even came to the board.





1           We -- we notified the board the -- of the activities  
2 and -- and, really, it was a function of how much can that area  
3 take? In the Malibu Lumber process, we -- you remember we had  
4 to move the leach field onto the -- the chili cook-off  
5 property -- the Legacy Park property, which became another  
6 issue.

7           These projects are not simple. They are very  
8 technically difficult. They are site specific. We're not  
9 talking about an inland area. We're talking about an area that  
10 the board ultimately told the -- the -- the staff through a --  
11 a meeting such as this to work on a prohibition for this area.

12           So we were trying -- and -- and before the  
13 prohibition was -- was even a twinkle, we were trying to get  
14 them to a comfort level where we thought we could get it to the  
15 board.

16           And that was something I had discussed with the  
17 discharger when I first engaged was "I think I know where the  
18 board is. Let me try and work with you to get to a comfort  
19 level where the board may give you a permit."

20           So, again, this wasn't a nefarious plot. This wasn't  
21 about politics. This was literally the staff was working to  
22 get comfortable, was not comfortable, notified the discharger.  
23 We didn't stay silent. We were -- we were very vocal. We  
24 thought we (inaudible) record, and then it became,  
25 unfortunately, a legal issue.



1 BOARD MEMBER GLICKFIELD: Okay. My last question is -- of  
2 you is, basically, at this point, do you still -- the staff  
3 does not have, given the evidence that -- that -- that they  
4 currently have provided to us, do you have confidence that they  
5 can operate a no-discharge permit accurately, or do you feel  
6 that that's -- that there's -- there's still weakness in the  
7 data that they've provided to you?

8 MS. EGOSCUE: I've taken great lengths not to have a  
9 technical argument today and not to have technical  
10 representations. What I will say is that my staff has  
11 represented to me that there are still concerns about whether  
12 or not this facility will impact and degrade the -- the water  
13 quality in that area. That's how I will answer your question.

14 BOARD MEMBER GLICKFIELD: Okay. Thank you.

15 Mr. Schmitz, I'd like to ask you a question.

16 UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

17 CHAIRWOMAN LUTZ: Yeah. I'd love to give you an idea of  
18 how much longer if I had an idea. I'm -- I'm thinking maybe we  
19 will be done by 6:30.

20 Do you need a break, or will we be all right?

21 UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

22 UNIDENTIFIED FEMALE SPEAKER: So you need a break?

23 CHAIRWOMAN LUTZ: Yeah. Let's give her a -- a quick break  
24 before she has carpal tunnel. We'll take another break until  
25 right up to six o'clock. Okay?



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(A break was taken.)

And we're laughing because my profession is court reporting.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

CHAIRWOMAN LUTZ: Fran, you had -- no.

You had questions. I'm sorry. Go ahead.

BOARD MEMBER GLICKFIELD: My -- I had -- I had asked you to come to the podium, Mr. Schmitz.

MR. SCHMITZ: Yes, ma'am.

BOARD MEMBER GLICKFIELD: And I wanted to ask you since you -- since your technical advice (inaudible) assert that this is a zero-discharge system and that every possible contingency -- you have addressed every issue, staff is recommending a -- a W.D.R. with a zero discharge.

Why do you have a problem with that?

MR. SCHMITZ: Because we are required under Title 22 to design the project to incorporate off-spec flows. This is a --

BOARD MEMBER GLICKFIELD: What's an "off-spec flow"?

MR. SCHMITZ: Off-spec flow -- let me embellish upon that. That's a very good question.

BOARD MEMBER GLICKFIELD: Very short -- very --

MR. SCHMITZ: Very short.

If -- if you give the -- the effluent thing -- the really clean Title 22 water -- if you get a turbidity beyond a certain point, it doesn't qualify for Title 22. That means you



1 cannot in any way, shape, or form have human-contact exposure.

2 BOARD MEMBER GLICKFIELD: So what you need is some  
3 provision for discharge into groundwater; is that --

4 MR. SCHMITZ: For off-spec flows. That's --

5 BOARD MEMBER GLICKFIELD: Yes. Thank you.

6 MR. SCHMITZ: That's correct.

7 BOARD MEMBER GLICKFIELD: Well, that's -- that answered  
8 that question.

9 The other question is: A year -- let's see -- it was  
10 over a year ago -- I think -- I think in November of 2008 --  
11 that this board was considering the vote to -- to seek a  
12 prohibition. At that time, the -- the then Mayor Pamela Conley  
13 Ulich? --

14 MR. SCHMITZ: Ulich -- yes, Pamela Ulich.

15 BOARD MEMBER GLICKFIELD: -- came to this board and said,  
16 "You don't need to do this. We're going to do a sewage-  
17 treatment plant. We have just approved La Paz with a  
18 substantial increase in density in exchange for offering us a  
19 site for the sewage-treatment plant, and that's where we're  
20 going to put our sewage-treatment plant."

21 So do you have that approval from the City of Malibu?

22 MR. SCHMITZ: One of the things I -- the answer is --

23 BOARD MEMBER GLICKFIELD: Yes or no?

24 MR. SCHMITZ: Well, yes, but I need to give you a complete  
25 answer. The City of Malibu approved two projects



1 simultaneously. One was a .15 project and one was a .20. The  
2 .20 had a 2.3-acre carve-out. That's what the municipal  
3 building was that you saw in the presentation. We designed it  
4 for a city hall. The development agreement specifies it can be  
5 for any municipal use and -- and it specifically emphasizes

6 "including a centralized sewage-treatment plant."

7 I am pending in front of California Coastal  
8 Commission because the development agreement constitutes an LCP  
9 amendment, and we are supposed to be heard by March -- next  
10 month -- or no later, April. At that point --

11 BOARD MEMBER GLICKFIELD: So why is it that you prefer to  
12 do this when this board is asking the City -- the City has  
13 said, "This is where we want to put our sewage-treatment  
14 plant."

15 You -- I don't -- this -- I guess it was a year ago,  
16 and you still haven't gotten your -- before the Coastal  
17 Commission. They must have permit streamlining problems too.  
18 But you haven't gotten before the Coastal Commission, but what  
19 you're asking us to do is preclude the possibility that your  
20 site is going to be used for a sewage-treatment plant. Why  
21 would we do that?

22 MR. SCHMITZ: No (inaudible) chair or -- Member  
23 Glickfield, we are not -- if we approve -- if you approved the  
24 discharge standards for the system that we have designed, in no  
25 way, shape, or form would that preclude the City of Malibu from



1 using that 2.3 acres for a centralized sewage-treatment plant.  
2 We have our own system -- it's a Title 22 system -- with our  
3 own cleansing and our own disposal.

4           However, if the City wishes to do so, they could  
5 still build a centralized sewage-treatment plant on the 2.3

6 acres and clean the water for the existing facilities within  
7 the civic center. One does not contradict the other at all.

8           BOARD MEMBER GLICKFIELD: So what's -- what's the --  
9 except for that if you choose following -- if we give you this  
10 permit to discharge this -- these -- these extra flows and you  
11 choose to implement this, it's going to be a very costly  
12 system, and you're not going to want to abandon it, and you're  
13 certainly going to be building the lower density so you  
14 won't -- you will actually have chosen not to take the  
15 additional density, and you will have chosen not to take  
16 this -- not to have the sewage treatment plant on your site.  
17 So that's a consideration for us to think about.

18           I think, pretty much, that's the end of my questions  
19 at this point so --

20           I -- I have some statements to make when we go in for  
21 discussion.

22           CHAIRWOMAN LUTZ: Ms. Diamond?

23           BOARD MEMBER DIAMOND: Well, I -- I -- I -- I'm very  
24 cognizant of the fact that -- and -- and I agree with what our  
25 executive officer said about this coming down to a legal



1 matter. Certainly, listening to your -- your plans about what  
2 this -- this facility -- La Paz -- will be like sounds -- it  
3 sounds good.

4 And, certainly, Malibu Lumber sounded really good to  
5 us and we -- we took a leap of faith and -- with Malibu Lumber,  
6 which I understand is a totally different system, and we're  
7 very disappointed with the results thus far.

8 But at this point, it's not really about the -- the  
9 great system that you're proposing. You -- you say that you  
10 won't be discharged but that you still need some ability to  
11 discharge.

12 So our W.D.R. with no ability to discharge -- even if  
13 you were to get some kind of a -- and I guess this might be a  
14 question for you, Mr. -- Mr. Schmitz -- or whoever wants to  
15 answer. What if you got -- what if we issued this W.D.R. with  
16 no discharge but also then you came back for a Title 22  
17 permit -- another (inaudible) permit so that you have the  
18 combination of the two? Why wouldn't that be sufficient?

19 MR. SCHMITZ: Through the Chair, Board Member Diamond,  
20 that would be completely sufficient, and that is exactly what  
21 is before you. Our --

22 BOARD MEMBER DIAMOND: I don't think that's what you had  
23 asked -- what is before us.

24 MR. SCHMITZ: The -- we have submitted to your staff the  
25 Title 22 working drawings, your staff assisted us in designing



1 that system, and we have processed those working drawings and  
2 received the approval from the California Department of Health  
3 Services. The fact of the matter is that Title 22 system, once  
4 we are cleared by you, can be built. It is already processed.

5 BOARD MEMBER DIAMOND: You know, I have to say that the  
6 biggest mistake that you've made has nothing to do with the  
7 design of your project. It has to do with you are challenging  
8 the authority, by coming before the board, to staff and saying,  
9 "Aha. We've already got our application. We don't need you  
10 anymore."

11 That was a mistake. You may not think so, but as far  
12 as I'm concerned, that was the mistake. Because what you're  
13 asking us to do is give up our authority to -- yes, you are.  
14 You're asking us to let you tell us what your W.D.R. should  
15 look like. You're saying you don't have an opportunity now to  
16 do that because you waited too long. And I'm going to ask our  
17 lawyers to again explain why they think you're incorrect.

18 But I think that was a big mistake because there's no  
19 way, at least, that I would vote to withdraw our authority to  
20 regulate water quality. That's what we do. That's what this  
21 water board does, and we've been recognized for doing a pretty  
22 good job of that. So I would have to say on the merits of the  
23 law that was a mistake.

24 And I -- and I think right now it's before the State  
25 Board, and so I couldn't say that we were wrong. I don't think





1 we are wrong in making this decision. I think that the State  
2 Board is going to make a decision about that.

3 But it's too bad that we had to go in this direction  
4 when I think you were on the right road to working with our  
5 staff to come up with W.D.R.'s that would be sufficient. But  
6 right now there's -- there's no way I can move forward on it.

7 So I'm -- what I guess I'm going to do is ask our  
8 lawyer -- or any one of our lawyers -- Jeff? -- to come up and  
9 explain again why the -- the law is on the side of the water  
10 board in not issuing -- or saying that this application was  
11 complete.

12 MR. OGATA: Thank you, Board Member Diamond. There are  
13 several pieces of law that support the Regional Board's ability  
14 to issue Waste Discharge Requirements. and, in fact, the law  
15 seems to compel you to issue Waste Discharge Requirements in  
16 situations where the Permit Streamlining Act had -- by  
17 operation of law an -- a -- an advocate has a deemed-approved  
18 permit.

19 Again, we covered this, but Title 23 California Code  
20 of Regulation Section 2208 states that, whenever a project is  
21 deemed approved pursuant to the Permit Streamlining Act, the  
22 applicant may discharge waste as proposed in the R.O.W.D. until  
23 such time as the regional board adopts Waste Discharge  
24 Requirements applicable thereto.

25 Now, the other part of the Water Code says that, when



1 the board adopts Waste Discharge Requirements, you have to  
2 consider all these factors -- which I covered before as well.

3           So it's not that -- so that's where I (inaudible)  
4 disagree with Ms. Stein. I think her position is that they  
5 already have a permit, and when the Regional Board looks at it  
6 again, they're not allowed to go back and -- and change it.  
7 They have to just take what's already been deemed approved and  
8 somehow adopt that.

9           Or, as you know from your experience, even looking at  
10 some of the things you (inaudible) earlier today, our Waste  
11 Discharge Requirements -- they're not just a project  
12 description. They have effluent (inaudible), they have other  
13 operating conditions, there's a monitoring and reporting  
14 plan -- all of these things are part of our W.D.R.'s, and the  
15 (inaudible) are fashioned upon the analysis about where this  
16 project will meet all these different factors.

17           So since -- since we hadn't done the complete  
18 technical analysis, if we don't believe we have all the  
19 (inaudible) we need, we're kind of in this circle where there's  
20 no way we could get up here and tell you that, you know,  
21 lawfully, you can issue a W.D.R. that doesn't (inaudible) their  
22 proposal. There has to be analysis that will reflect the  
23 findings that the (inaudible) made for the issued W.D.R.

24           So Ms. Egoscue, I think, put it very well that, at  
25 some point along the way, you know, unfortunately, it's become



1 a legal matter, which is why, again, when I started this --  
2 obviously, this is a very unusual situation. I don't know if  
3 you've ever been involved in a situation where you issued a  
4 W.D.R. that prohibited a discharge.

5 Typically, we allow discharges but subject to all  
6 these different conditions. Because we're concerned that,  
7 without the Regional Board taking some kind of an action, then  
8 this whole question about this deemed-approved permit is out  
9 there, and it's not clear what does that mean.

10 So by asking the board to take a position on that,  
11 that, yes, you had a -- a -- a W.D.R. that limits discharge --  
12 or, again, if there's other options. The board decides they  
13 want to deem the application complete but they still want to  
14 issue a W.D.R. that limits discharge, if you want to ask staff  
15 to come back with proposed W.D.R.'s.

16 There are additional options, but we feel strongly  
17 that this board must take some kind of an action to protect  
18 this jurisdiction because, as Ms. Egoscue said, this is now a  
19 matter of law.

20 Again, you know, with the lawyers speaking --  
21 (inaudible) lawyers speaking there's a problem here. So,  
22 unfortunately, (inaudible) so what does that mean? We do this  
23 as a legal issue, not a technical issue.

24 BOARD MEMBER DIAMOND: So if we -- if we were to adopt  
25 this -- the W.D.R. with staff recommendation, could the staff



1 then -- with no discharge -- could the staff then be also told  
2 to go back and work with the discharger and see if perhaps they  
3 could get a recycling Title 22 permit that would -- that would  
4 work along with their no-net discharge planned?

5 MR. OGATA: Yeah, well, I -- I can't speak for

6 Ms. Egoscue, she runs the agency, but I'm assuming that there's  
7 no problem with us continuing to work with the discharger. In  
8 fact, our proposed order states that, even if you issue the  
9 W.D.R. that prohibits discharge, it's without prejudice  
10 (inaudible) discharge until La Paz has come back to us again  
11 with another submittal, and if the submittal contains  
12 everything in the world that we've asked for, then, obviously,  
13 there's no reason that (inaudible) say we can't analyze it  
14 because we -- presumably, there would be the application at  
15 that point.

16 BOARD MEMBER DIAMOND: Does anybody else from staff have  
17 anything to reply, or is that -- further that?

18 Okay. That's it, then, for me.

19 CHAIRWOMAN LUTZ: Ms. Lombardo?

20 BOARD MEMBER LOMBARDO: Jeff? Where did he go? He  
21 disappeared.

22 MR. OGATA: Oh, I'm sorry.

23 BOARD MEMBER LOMBARDO: I looked out, and you're gone.

24 Okay. My concern is, listening to what Tracy was  
25 saying, it looks like they were on their way to -- to bring a



1 permit request in front of us -- or getting to that point --  
2 that -- that was eventually going to be coming down the road.  
3 My concern is, if we have them reapply for the R.--  
4 T.R.W.R. -- whatever it is -- the additional cost involved with  
5 them and the time and the process, understanding financing the  
6 way that I do since I'm a banker and how that is going to  
7 affect the bottom line of their project -- not that that should  
8 be a consideration of ours -- but it seems like we're putting  
9 some economic issues in -- into play here.

10 So I guess there's -- there's -- one of the questions  
11 that's -- that's bothering me is this: The issue -- I was,  
12 obviously, not on the board in November. I didn't start until  
13 December 10th so I'm not aware of what happened here with the  
14 prohibition, and we've only -- the -- the part of the law that  
15 was presented by the La Paz group was just one or two  
16 sentences.

17 So I would like some clarification on the -- first of  
18 all, their assumption that -- as far as we can't -- that is not  
19 in effect until they vote on that. If you could -- if you  
20 could go in that area first of all then --

21 MR. OGATA: I'm -- I'm sorry. I -- can you just ask the  
22 question again. What is it you (inaudible)?

23 BOARD MEMBER LOMBARDO: It's the prohibition as far as  
24 what the -- the little piece of law that they threw up on the  
25 overhead that basically said that, until the State Board votes



1 on it, it's not in place. I just want to know if that's true  
2 or not true.

3 MR. OGATA: Yes. However, as -- as I stated (inaudible)  
4 my slides in terms of what the status of this project is at  
5 this point in time --

6 BOARD MEMBER LOMBARDO: Uh-huh.

7 MR. OGATA: -- the Regional Board adopted a Basin Plan  
8 amendment which prohibited onsite wastewater disposal systems  
9 in the Malibu Civic Center area. La Paz is situated in that  
10 area. That Basin Plan amendment has to go to the State Board  
11 for approval, and then, if the State Board approves it, then it  
12 goes to the state Office of Administrative Law for approval,  
13 and at that point, if they approve it, then it becomes law.

14 BOARD MEMBER LOMBARDO: And what is --

15 MR. OGATA: Contrary -- (inaudible) this -- this -- this  
16 one does not include EPA. Other -- others do, but this one was  
17 does not include EPA. So, after that process, it becomes law,  
18 and it's fully enforceable.

19 But having said that, it is a policy of this Regional  
20 Board, it's a consideration of this Regional Board, but I  
21 (inaudible) not advise you to deny a permit to anyone solely  
22 based upon the fact that the prohibition is (inaudible) because  
23 it's true that it's not legally enforceable until the State  
24 Board acts and until Office of Administrative Law acts.

25 But, again, that does not mean that -- that you have



1 to ignore all the evidence, all the investigation, all the  
2 research that was done in that proceeding. That certainly  
3 becomes part of -- of all the consideration -- all the factors  
4 that -- set forth, you know, in -- in -- in the Water Code.

5 BOARD MEMBER LOMBARDO: I understand that and my -- my  
6 other question, which is back to where -- where I just started  
7 to lay the groundwork there with their resubmittal is there  
8 seems to be a disconnect with the -- the streamlining permit  
9 process and how they feel that they have a permit and we don't.

10 Can you tell me, besides the fact that it comes down  
11 to the work, if we felt the -- if we felt that they did not  
12 have a complete submission, is there anything -- I mean,  
13 they're telling -- they -- obviously, they feel strongly that  
14 they have a permit according to the law, and I guess I need to  
15 understand more clearly why we don't think that that assumption  
16 is correct.

17 MS. EGOSCUE: Let me first ask -- answer something --  
18 or -- or clarify something on the resubmittal. It would not be  
19 a resubmittal. We've crafted this proposal to the board very  
20 carefully that it's without prejudice. We would be simply  
21 waiting for a complete application.

22 So the expense and the time -- it would be a complete  
23 application. If you'd like, Elizabeth can go into why it is  
24 not complete, if there's some doubt in the board's mind as to  
25 why it still remained incomplete, but that is what we'd be



1 waiting for.

2 As for the -- the -- your second question, which is  
3 what -- what -- they feel strongly about a -- they've got a  
4 permit, in the abstract, and if we were arguing in front of a  
5 judge in a superior court, once this board acts and because

6 there has not been a discharge, it is irrelevant whether or not  
7 they had a permit in the interim, which is why, again, I am  
8 advocating that this board acts and -- and asserts its  
9 jurisdiction.

10 And, quite simply, the first proposal in front of you  
11 is give them a Waste Discharge Requirement that doesn't have  
12 any affect on them, because there is no discharge, leave it  
13 open for them to come back, complete their application, and let  
14 us proceed. That is essentially what we are asking the board  
15 to do.

16 BOARD MEMBER LOMBARDO: Okay. Yeah.

17 CHAIRWOMAN LUTZ: I -- I have a -- just a couple of little  
18 questions. One is, yes, I understand that the prohibition has  
19 not been approved by the State Board and -- as of yet, but if  
20 we were to look into the future, under the category of  
21 "unintended consequences" -- I want us to look into the future  
22 and say, "The State Board did approve the prohibition."

23 Now, we today approve the -- the -- the staff's  
24 recommendation and the State Board approves the prohibition;  
25 what is the result?





1 MS. EGOSCUE: As -- well, this is, again, "pie in the  
2 sky."

3 CHAIRWOMAN LUTZ: It is.

4 MS. EGOSCUE: As you recall, one of the exceptions to the  
5 prohibition was the city operate its system. That is an  
6 option. That is something La Paz themselves brought as a -- as  
7 an option to the city, it was in their draft E.I.R., and,  
8 therefore, as we proceed down this line, if their system  
9 becomes a city-operated system, it will not be affected by the  
10 prohibition -- again, something that we would be discussing if  
11 we weren't right now at odds trying to defend our jurisdiction  
12 and ultimately going to a court.

13 CHAIRWOMAN LUTZ: So let me just make sure I understand  
14 what you're saying. In all speculation, hypothetically --

15 MS. EGOSCUE: "Pie in the sky."

16 CHAIRWOMAN LUTZ: -- "pie in the sky" -- we approve this  
17 W.D.R. in front of us, and the State Board approves, and the  
18 prohibition is -- is all ratified, if La Paz does this system  
19 and the City hooks up to it or sends additional discharge to  
20 their zero-discharge system, it meets all the requirements; do  
21 I have that correct?

22 MS. EGOSCUE: I'm going to say it a little bit  
23 differently --

24 CHAIRWOMAN LUTZ: Okay.

25 MS. EGOSCUE: -- instead of "meets all requirements." So



1 when the -- when the prohibition was passed by this board, one  
2 of the exceptions was a discharge that has city -- that was  
3 city run and operated, so a publicly owned discharge.

4 CHAIRWOMAN LUTZ: Okay. Yes.

5 MS. EGOSCUE: That was one of the exceptions.

6 CHAIRWOMAN LUTZ: Right.

7 MS. EGOSCUE: As you recall, in the months leading up to  
8 it, the -- the City had indicated that one of their options  
9 might not be a single plant, but might be multiple plants  
10 throughout the civic center area.

11 CHAIRWOMAN LUTZ: Right.

12 MS. EGOSCUE: So, again, we have been working in good  
13 faith, we -- that was an option that was on the table, and,  
14 unfortunately, we find ourselves in this position. But we feel  
15 that we have been completely reasonable, we have not been  
16 arbitrary, and we have not been capricious, and we are willing  
17 and we are asking the board to let us do two things: Assert  
18 the jurisdiction over the discharge, and work with the  
19 discharger to complete their application.

20 And that is as simple as I can put it.

21 CHAIRWOMAN LUTZ: Thank you. Thank you. That helped a  
22 lot. I -- I -- I don't like the idea of us handing over our  
23 authority to anybody that's -- that's -- as Board Member  
24 Diamond said so eloquently, that is what we do, and I think --  
25 but at the same time, I find myself in a position where I don't



1 think I could, in all good conscience, say, adopt a W.D.R. that  
2 the dischargers are talking about because, quite frankly, I  
3 don't have that in front of me. I don't even know what it is.  
4 I -- I saw some slides of some technical things, but we haven't  
5 been given all of the -- we're only -- we're seeing one side of  
6 the picture today.

7           So, in my opinion, I -- I -- I like the -- I like the  
8 direction that the staff has brought us. I don't really think  
9 that we -- there is another option for us to do because we  
10 can't -- in all good conscience, I -- I don't know how we can  
11 approve a W.D.R. that isn't even before us.

12           I think Steve is going to make a motion.

13           BOARD MEMBER BLOIS: But, now, the message -- the thing  
14 that we need to do is we need to figure out a way to get an  
15 outstanding project going forward, and we've got to figure out  
16 how to get our staff and their staff talking again to meet both  
17 of our common objectives instead of "lawyering up," for lack of  
18 a better term, and that's what we're up against.

19           We've got to figure out a way to send a message,  
20 let's spend our money and our resources, you know, figure out  
21 how to improve water quality, how to develop reasonable growth  
22 and things in the area that make sense.

23           I don't want to get into the planning because we're  
24 not a planning agency. I don't want to get into, you know, a  
25 whole bunch of litigation when we can possibly avoid it. I



1 think -- and -- and, quite frankly, from what I've heard today,  
2 this has great potential to be a poster child of how --

3 CHAIRWOMAN LUTZ: Great.

4 BOARD MEMBER BLOIS: -- water quality ought to be handled.

5 But I -- and I was all set and prepared to do

6 something based on that, but you made a very good point, and  
7 I've got to back up a little bit, and we really can't approve a  
8 W.D.R. for these guys since we don't know what the details are.  
9 I mean, I'm assuming that we've got -- we've got to get both  
10 sides together to agree on it. So I don't know how to send  
11 that message.

12 CHAIRWOMAN LUTZ: I -- I think -- I think that it is  
13 the -- the -- the suggestion of the staff that we approve this  
14 W.D.R. with zero discharge, send them back with the  
15 dischargers, we work, figure it out at -- bring back a W.D.R.  
16 that everybody is comfortable with that covers their -- their  
17 little discharges that they may have.

18 Then they also have to have the recycling permit --  
19 and maybe that can be done at the same time, I'm not sure, but  
20 it'd be great -- and that can be done all together. That's  
21 what I would like to see us do.

22 BOARD MEMBER BLOIS: Here's what I'll do then: I'm  
23 about -- I was going to make a motion. I'm not, but I was  
24 going to make a motion on No. 2, and that is to direct staff  
25 to -- that the thing is deemed complete, go ahead, but I was



1 going to put a proviso on there that I understand I probably  
2 can't do so -- and it involves telling the lawyers to back off.

3 CHAIRWOMAN LUTZ: I think you can tell them that's your  
4 desire. We can't force them.

5 BOARD MEMBER BLOIS: So at -- and then when Tracy was just  
6 up here talking, I -- it became a little bit clearer to me --  
7 still a gray area -- but I -- I -- I agree with you.

8 So I'm going to make a motion that we adopt the  
9 tentative Waste Discharge Requirement which would prohibit  
10 La Paz from -- from -- what is it? -- initiating a discharge as  
11 proposed under its Report of Waste Discharge. At the same time  
12 saying that, the message we're trying to --

13 CHAIRWOMAN LUTZ: Do you want to go with the -- the other  
14 part -- the order adopting is without prejudice?

15 BOARD MEMBER BLOIS: Oh, yeah. No. This action would be  
16 made without prejudice to La Paz submitting a new Report of  
17 Waste Discharge, and, in fact, by this action, we are highly  
18 encouraging them to do so.

19 BOARD MEMBER LOMBARDO: Okay. Can you put a timeframe on  
20 it so that it's back in front of this board within a reasonable  
21 amount of time?

22 BOARD MEMBER BLOIS: I'd like to, but I'm not going to.

23 BOARD MEMBER DIAMOND: I'm going to second the motion,  
24 which is, I believe, if I'm -- if I'm hearing you correctly at  
25 this time, that your -- your motion is to adopt the staff



1 recommendations.

2 BOARD MEMBER BLOIS: That's correct.

3 BOARD MEMBER DIAMOND: I second that.

4 CHAIRWOMAN LUTZ: Is there any further discussion?

5 BOARD MEMBER GLICKFIELD: I'm going to support the motion

6 but it -- I'm a little bit concerned because my preference is  
7 for them to take "door B," which is have a publicly owned  
8 treatment system on their site, get the extra density, and have  
9 the -- and have the City operate that, solving our problem of  
10 the whole prohibition so --

11 BOARD MEMBER BLOIS: Yeah. Ms. Glickfield, he just told  
12 us that, by doing this -- by proceeding with their plan, that  
13 is absolutely not precluding that.

14 BOARD MEMBER GLICKFIELD: Well --

15 BOARD MEMBER BLOIS: As a matter of fact --

16 BOARD MEMBER GLICKFIELD: -- if they size it for their  
17 development (inaudible). And the second part of the problem is  
18 that they have -- they will -- will be opening up the right for  
19 them to just develop the site for their -- for their own  
20 development and will be precluding it from being used for --  
21 for the -- so I have absolutely no problem with, basically,  
22 telling -- having a zero-discharge permit and asking the staff  
23 to go back and work at that, but I don't want to preclude the  
24 other option either, and I hope that the motion --

25 CHAIRWOMAN LUTZ: And so --



1 BOARD MEMBER GLICKFIELD: -- is intended to do that.

2 CHAIRWOMAN LUTZ: Okay. So -- so what we have is a motion  
3 and a second, and we have two points of view that we would like  
4 to have everybody hear clearly (inaudible) would like the  
5 lawyers to back off, and let's just get our staffs together and  
6 work, and the other thing we'd like is to really strongly  
7 suggest this -- the consideration of a municipal treatment  
8 plant.

9 And so, with that, I will call for the -- all in  
10 favor?

11 (Said in unison.)

12 BOARD MEMBERS: Aye.

13 CHAIRWOMAN LUTZ: Opposed?

14 Motion carries.

15 UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

16 UNIDENTIFIED FEMALE SPEAKER: I -- is it with the board's  
17 (inaudible) --

18 CHAIRWOMAN LUTZ: Do -- you -- you voted yes --

19 BOARD MEMBER LOMBARDO: Yes, I did.

20 CHAIRWOMAN LUTZ: It was unanimous.

21 The -- this is the end of our meeting this afternoon  
22 that we thought would never end. Our next --

23 (Conclusion of Recorded Material.)

24 -o0o-

25

